

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3931 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

S K SIMPI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3931 of 1994
MR S TRIPATHY for Petitioner
Mr.Satish A. Pandya, AGP for Respondent No. 1
-

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/04/99

ORAL JUDGEMENT

#. The petitioner who was serving as Under Secretary to Government, has filed this petition under Article 226 of the Constitution of India for directing the respondents to change his date of birth from 4.3.1936 to 14.5.1938 and to give all service benefits as would accrue to him.

#. In order to understand the grievances of the petitioner, certain facts are required to be stated.

The petitioner was appointed as a clerk with effect from 15.6.1959 in the erstwhile Bombay State. It is the case of the petitioner that he submitted the certificate of his age, nationality and domicile etc. issued by the Additional Chief Presidency Magistrate, Bombay, wherein the date of birth of the petitioner is mentioned as 14.5.1938. Apart from this the certificate, it appears that the petitioner also produced Secondary School Certificate wherein the date of birth of the petitioner is mentioned as 4.3.1936. On the basis of the Secondary School Certificate, in the service record, his date of birth was recorded as 4.3.1936.

#. The petitioner, for the first time moved the respondent authorities on 6.7.90 stating that his date of birth is wrongly recorded in the Secondary School Certificate as 4.3.1936. The petitioner submitted a copy of the certificate issued by Taluka Mamlatdar as extracts of the Birth & Death Register in which it is stated that the date of birth of his elder brother Shri B.K.Simpi is 18.2.1936 and the date of birth of the petitioner as 14.5.1938. The petitioner pointed out that physically, it is impossible for the petitioner to be born 14 days immediately after his elder brother. It was submitted by the petitioner that the petitioner and B.K. Simpi are not twins. The petitioner along with the said representation also produced all the original documents viz. extracts of the Birth and Death Register issued by the Taluka Magistrate, Secondary School Certificate, domicile certificate and extracts from the Birth and Death Register in respect of his elder brother Shri B.K.Simpi. It is to be noted that the elder brother of the petitioner Shri B.K.Simpi was also serving as Private Secretary to the Legal Secretary and in his service records, the date of birth was entered as 18.2.1936. Said representation was rejected vide letter dated 15.11.90, copy of which is at Annexure.C to the petition. The petitioner made a further representation to the respondent authorities on 6.12.1990 to the Principal Secretary, Agriculture, Co.operation and Rural Development Department requesting the authorities to take appropriate decision taking into consideration all relevant facts like the extracts from the Birth & Death Register, Secondary School Certificate and the obvious fact that the petitioner could not be born 14 days after his immediate elder brother, vide Annexure-D to the petition. It appears that the State Government went deep into the matter by asking the petitioner vide letter

dated 5.2.91 to supply further information like whether the petitioner was of the requisite age when he joined the primary school, whether he had attained the appropriate age while appearing in the Secondary School Examination and University Examinations, whether he was eligible for joining the Government service and if he was eligible what was the age limit at that time etc. The petitioner was also called upon to explain as to why he did not apply for change in date of birth within the specified time. The petitioner has produced said letter dated 5.2.91 vide Annexure E to the petition. The petitioner after collecting all the requisite information asked for by the Government submitted his reply on 20.5.92 vide Annexure-F to the petition. Since many documents supplied along with the reply dated 20.5.93 were in Kannada language, Government of Gujarat on their own called for the English version of the documents from the original authorities. It is the case of the petitioner that the English version of the information sought for was received by the Government of Gujarat in the third week of December 1993. The petitioner, in the meantime also sent one reminder dated 25.2.95 vide Annexure.G to the petition and since the petitioner did not receive any intimation, the petitioner moved this court on 18.3.1994 as he was to retire on 31.3.94. Even though the petitioner prayed for an injunction restraining the respondent from retiring the petitioner on 31.3.1994, this Court refused the interim relief on 21.3.1994. It appears that the State Government decided the representations dated 6.12.90 and 20.5.93 on 22.3.94 after the Rule was issued in the petition. The communication given by the respondents to the petitioner in this regard is produced vide Annexure.1 to the affidavit in reply filed by Shri A.V.Vohra, Under Secretary to Government, General Administration Department.

#. Mr. Tripathi learned advocate for the petitioner invited my attention to one document produced along with the petition viz. the certificate issued by the concerned Authority from the extracts of Births and Deaths Register giving details about the date of birth of the petitioner as well as his elder brother of B.K. Simpi and submitted that the petitioner has a genuine case inasmuch as it is impossible for the petitioner to be born 14 days after his elder brother. Mr. Tripathi also invited my attention to the Government Resolution No. ASC-1062- F dated 3.5.1962 issued by the General Administration Department whereby the Government modified the earlier orders issued directing that production of certificate of age and nationality in the prescribed form

issued by the District Magistrate or a Magistrate authorised by him in this behalf to be discontinued for the purpose of recruitment to the Government service. He further contended that the date of birth as given in the Matriculation and S.S.C.E. certificate cannot be taken as the correct date of birth. Mr. Tripathi submitted that since this Government Resolution has come into force on 3.5.1962, the certificate of age and nationality issued by the District Magistrate or a Magistrate authorised by him was considered as correct and since the petitioner has produced the certificate issued by the Additional Chief Presidency Magistrate, Bombay dated 18.9.1958 stating the birth date as 14.5.1938, the same is required to be accepted as the correct date of birth of the petitioner.

#. Mr. Tripathi further submitted that so called delay on the part of the petitioner cannot come in the way of the petitioner in any manner and the just claim of the petitioner cannot be rejected on the technical ground of delay.

#. Mr. Satish A. Pandya learned AGP for the respondent contended that the petitioner is not entitled to get any relief from this Court as the petitioner approached the State Government for the first time in the year 1990 i.e. after the specified date for correcting the date of birth in the service record. In the submission of Mr. Pandya the petitioner is not entitled to get any relief at such a belated stage.

#. Having gone through the pleadings of the case, it is clear that delay is the main ground on which the claim of the petitioner is challenged by the respondents. True there is delay on the part of the petitioner in approaching the Government authorities, but one has to look to the fundamental grievance of the petitioner. The only explanation given by the respondents to the effect is that there was no provision to change the date of birth under the administrative control of Government of Gujarat till 18.2.1974. The only date of birth that they were accepting is the date of birth which was recorded in the School Leaving Certificate. The petitioner therefore was bound to inform the authorities much earlier about the change of the date of birth of the petitioner. According to the petitioner, the petitioner came to know about the change in the policy to change the date of birth sometime in the year 1975-76. However, unfortunately the certificate of age, nationality, domicile etc. issued by the Additional Chief Presidency Magistrate were not traceable and hence the petitioner

could not move the authorities. According to the petitioner he brought the extracts from the Birth and Death Register. However, he was not successful as he was staying in Gandhinagar and similarly the extracts of birth and deaths issued by the Tahsildar, Hirekerur, District Dharwad, State of Karnataka was also not traceable and since the above documents could only be traced in the year 1990, the petitioner moved the authorities and has pursued the case thereafter. Aforesaid explanation for approaching the respondents late does not appear to be plausible and therefore, the fact remains that the petitioner was not vigilant in his attempt to persuade the respondents. Therefore, the question that arises is whether on this ground the petitioner can be driven out from service; in other words whether that technicality of delay can over ride the justice when the petitioner has good case on merits.

#. I have gone through the materials on record and I am of the view that the petitioner has successfully made out a case for interference in the matter and the so called delay on the part of the petitioner can never be used against the petitioner while adopting a shortcut in disposing the case on technical grounds.

#. As stated above the elder brother of the petitioner was also serving in the Law Department of the State of Gujarat and has retired on superannuation on 28.2.94. As can be seen from the certificate of birth issued by the Chief Registrar of Births and Deaths, Government of Karnataka at page 25-A of the compilation, The elder brother of the petitioner is Mr. B.K.Simpi is born on 18.2.1936. Similar certificate is issued by the said authority wherein the age of the petitioner is shown as 14.5.1938. However, in the service record of the petitioner on the basis of Secondary School Certificate, his date of birth is shown as 4.3.1936. If that date is accepted as the date of birth of the petitioner, it would be practically impossible for the petitioner to be born 14 days immediately after his elder brother. The extracts of the entry by the Registrar of Births and Deaths of the petitioner as well as his elder brother are in Kannada language and copies of the same are produced vide pages 23 and 25 of the compilation. The petitioner applied for copy of the same on 1/2-9-1958. Endorsement below these extracts also suggests that copy of the same was delivered to the petitioner on 2.9.1958. It is the case of the petitioner that these extracts were produced before the Additional Chief Presidency Magistrate, Bombay and said authority has issued a certificate on 18.9.1958 showing the date as 14.5.1938 vide page 24 of the

compilation which is the date of birth of the petitioner. It is therefore, clear that said authority has issued the certificate perusing the extracts of the entry registered by the Registrar of Births and Deaths of the petitioner as well as his brother. On the basis of said certificate of age , nationality, domicile etc. the petitioner was appointed as a Clerk in the erstwhile Bombay State. Unfortunately in the service record the date of birth of the petitioner was entered as 4.3.1938 as per Secondary School Certificate . The date 4.3.1936 is obviously a mistake as no two brothers can born after a gap of 14 days. Once it is held that the date of 4.3.1936 being the date of birth of the petitioner entered in the service record by mistake, said mistake cannot continue for all time to come. It is not a clerical mistake. It is true that by entering 4.3.1936 being the date of birth cannot be construed as a clerical mistake as said entry was made on the basis of Secondary School Certificate. Therefore, the next question that arises is whether which out of the two date of births viz. the date of birth mentioned in the Secondary School Certificate to be considered as authentic proof of date of birth of the petitioner or the date of birth mentioned in the extracts of Births and Deaths Register . The Government of Gujarat has in its General Administration Department issued a circular No. RTR-1073/1215-K dated 18.2.74. The petitioner has produced said Circular vide Annexure.H vide page 28 of the compilation. On reading the said Circular it is clear that said circular clearly states that in the event of any change in the birth dates recorded in the School Leave Certificates, Matriculation Certificates, Secondary School Certificate Examinations, or the extracts from Birth and Death Registers of the local bodies or Municipalities etc., the birth dates as recorded in the Extracts from Births and Deaths Registers should be accepted as correct and final for all purposes including admission into Government service. Once the Government has taken such a decision and when the petitioner has invited the attention of the Government to the extracts of Births and Death Register, the entry therein cannot be over ruled by the concerned respondents. Thus considering the matter from this angle viz. that the petitioner is armed with sufficient materials showing 14.5.1938 being his date of birth, he is entitled to be retained in service till he reached the age of superannuation counting the period from the same date of birth. This is the just and valid date of birth and this can never be overlooked on the ground of delay It is therefore held that the petitioner is born on 14.5. 1938 and therefore, the action of the respondents in retiring the petitioner on 31.3.1994 is illegal and bad

in law. The petitioner is entitled to serve till 31.5.1996. I think he has not retired with effect from 31.3.1996 with all wanted benefits available to him. Mr. Tripathi for the petitioner fairly conceded that the petitioner will not claim any promotion or any benefit arising out of the promotions that may have been granted between 31.3.1994 and 31.5.1996. In the result the petition is allowed. The respondents are directed to treat the period from 31.3.94 to 31.5.1996 as if the petitioner has continued in service in the post which he was holding at that time and shall pay all the monetary benefits for the said period as if the petitioner has been retained in service. The respondents are further directed to calculate the monetary benefits available to the petitioner within two months and thereafter shall pay the same to the petitioner one month thereafter from the date of receipt of the writ of this court. If the amount is not paid to the petitioner within the stipulated time, the respondents shall pay the amount with 12 percent interest. Rule is made absolute with no order as to costs.

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